IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.502 OF 2005

Vasant Bhaskarrao Katkunde & Anr. : Petitioners

(Orig. Pltffs.)

V/s.

President Bharat Shikshan Prasarak

Mandal & Ors. : Respondents

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Mr.Sameer A. Kumbhakoni for the petitioners.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

June 14, 2005.

P.C.:

1. By this petition, the petitioner challenges the order appointing the Court Commissioner. The trial Court has, by the impugned order, directed the Commissioner to visit the suit premises and inspect the condition and situation of the suit property, in the presence of both parties, after issuing notices. The Court has directed the Commissioner to inspect the situation and exact condition of the suit property while the school is run and the students are present in the school. It appears that in

the suit filed by the petitioner for eviction, several aspects have cropped up such as whether the respondents have stopped using the petitioner's premises for running the school or whether the respondents have shifted some of the students in the open area because there is insufficient place in the school premises. It is for elucidating the matter in controversy that the trial Court has appointed the Commissioner. In my view, this report amounts to appointing the Commissioner to collect evidence since it does not relieve the petitioner from leading evidence on the point, but in order to elucidate the controversy in the suit as contemplated by Order 26 Rule 9. Needless to say that the petitioner will have full opportunity to take such objections as may be advised, in accordance with law.

2. The petition is hereby dismissed.

Sd/-

S.A. BOBDE, J.